INDEX

Subject Index

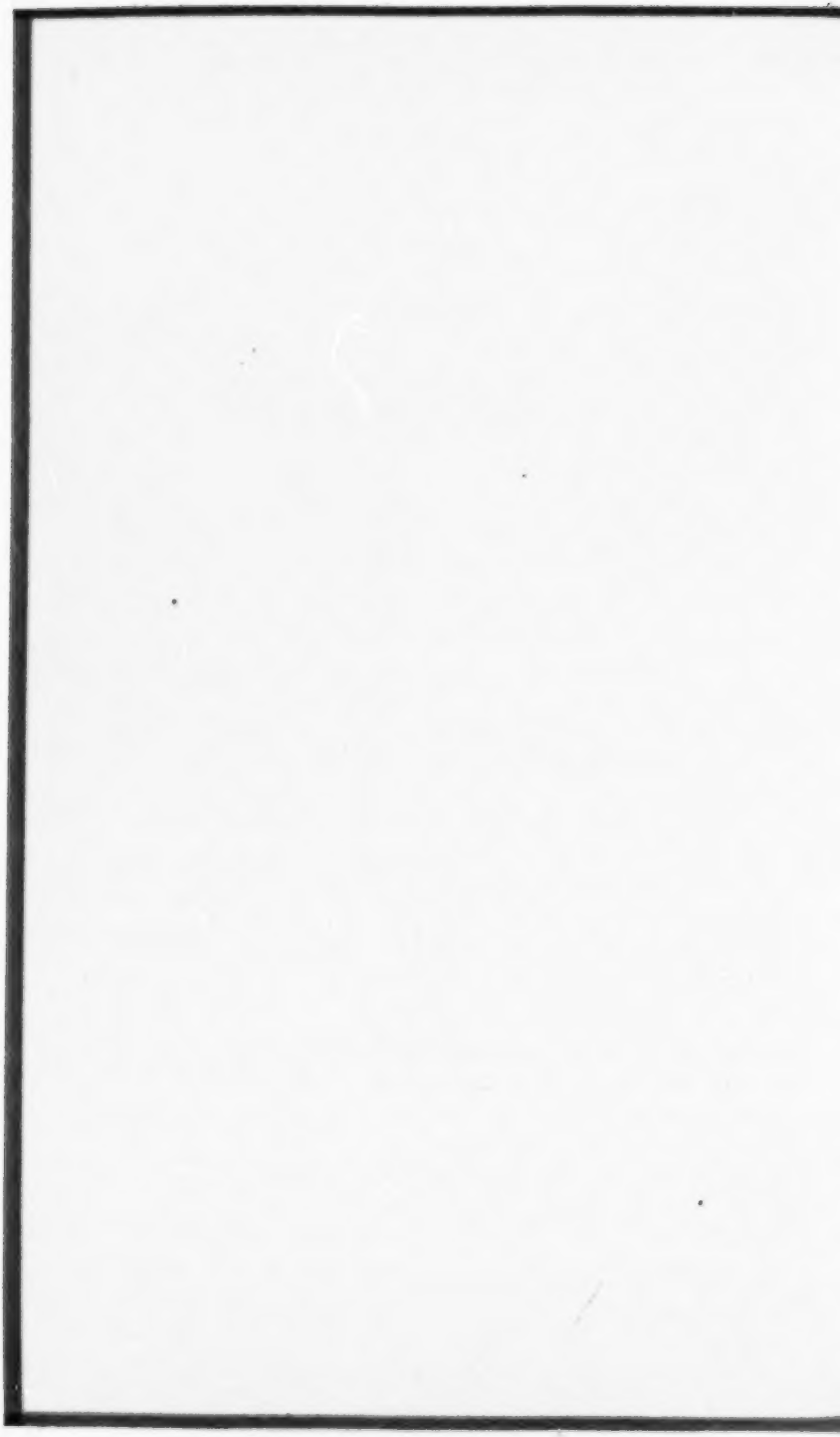
	Page
Statement as to jurisdiction	1
Statutory provisions sustaining jurisdiction	1
Date of the judgment and application for appeal	2
State statute involved	3
Nature of the case	4
Questions involved are substantial	5
Cases believed to sustain jurisdiction	5
Opinion below	6

Table of Cases Cited

Connally v. *General Construction Co.*, 269 U. S. 385, 70 L. Ed. 322	6
Lanzetta v. *New Jersey*, 306 U. S. 451, 83 L. Ed. 888	5
State v. *Price*, 164 La. 376, 113 S. 882	4

Statutes Cited

Act 43 of 1942 of the Legislature of the State of Louisiana, Article 107, Section 7 (Darts Louisiana Code of Criminal Law and Procedure, 1943 Edition, p. 572, Sec. 740-107, fragment 7)	2, 3, 4, 5
Constitution of the State of Louisiana, 1921:	
Art. 7, Sec. 10	3
Art. 7, Sec. 29	3
Constitution of the United States, 14th Amendment	5
Judicial Code, Section 237, as amended (28 U. S. C. 344)	1, 2



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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 675

RICHARD WILLIAM MARSHALL,
Appellant,

vs.

STATE OF LOUISIANA,
Appellee

JURISDICTIONAL STATEMENT

Statement of Basis on Which Appellant Contends the Supreme Court of the United States Has Jurisdiction to Review on Appeal the Judgment Appealed From, as Required by Supreme Court Rule No. 12.

Pursuant to Supreme Court Rule 12, paragraph 1, Richard William Marshall, the above appellant, files this, his statement particularly disclosing the basis on which said appellant contends that the Supreme Court has appellate jurisdiction to review on appeal the judgment appealed from herein as follows:

1

The statute believed to sustain appellate jurisdiction is Section 344, of Title 28, of the United States Code, being

Section 237 of the Judicial Code, as amended, which provides that a final judgment or decree in any suit in the highest court of a state, in which a decision in the suit could be had, may be reviewed by the Supreme Court upon a Writ of Error, which there is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the constitution of the United States, and the decision in the highest State Court is in favor of its validity.

2

The judgment appealed from was entered on the 5th day of December 1947, as appears on page 35 of the certified unprinted record on file with the Clerk of the Supreme Court.

3

The application for an appeal was presented on the 4th day of February, 1948, as appears from page 3 of the certified unprinted record on file with the Clerk of the Supreme Court.

4

The appeal herein is from a judgment of the Criminal Division of the District Court for the First Judicial District of the State of Louisiana, in a criminal case to review conviction of appellant herein of a violation of Sec. 7, Art. 107, of Act 43 of 1942, of the Legislature of the State of Louisiana. (This Act being printed separately in compliance with Act #7 of the Regular Session of Louisiana for the year 1940, which column is the official edition of the Criminal Code of the State of Louisiana, said statute appearing on p. 112 thereof; the same appearing in Darts Louisiana Code of Criminal Law and Procedure, (1943

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edition)) (p. 572, Sec. 740-107, fragment 7). Said statute is quoted verbatim as follows:

> "The following persons are and shall be guilty of vagrancy: * * *
>
> (7) Persons who are found in or near any structure, movable, vessel, or private grounds, without being able to account for their presence therein;
>
> Whoever commits the crime of vagrancy shall be fined not more than $100.00, or imprisoned for not more than six months, or both;"

As appears from pages 19 & 31 of the certified unprinted record on file with the Clerk of the Supreme Court.

The Criminal Division of the District Court of the First Judicial District for the State of Louisiana is the Court of last resort in the State of Louisiana for a conviction of a misdemeanor for which a sentence is passed of less than six months in jail or less than a fine of $300.00 as appears from the following quoted statutes of the State of Louisiana:

Art. 7, Section 10, Const. 1921:

> "* * * The appellate jurisdiction of the Supreme Court shall also extend to criminal cases on questions of law alone, whenever the penalty of death, or imprisonment at hard labor may be imposed; or where a fine exceeding three hundred dollars or imprisonment exceeding six months has been actually imposed."

Art. 7, Section 29, Const. 1921:

> "The Courts of Appeal, except as otherwise provided in this Constitution, shall have appellate jurisdiction only, which jurisdiction shall extend to all cases, civil and probate, of which the Civil District Court for

the Parish of Orleans, or the District Courts throughout the State, have exclusive original jurisdiction, regardless of the amount involved, or concurrent jurisdiction exceeding one hundred dollars, exclusive of interest, and of which the Supreme Court is not given jurisdiction, except as otherwise provided in this Constitution, and all appeals shall be both upon the law and the facts."

See State *v.* Price, 164 La. 376, 113 S. 882 (1927).

6

Since the Supreme Court of the State of Louisiana has supervisory jurisdiction over all other inferior courts of the State of Louisiana, under Section 10, Article 7, Constitution of 1921, State of Louisiana, timely application to the Supreme Court of the State of Louisiana was made herein for Writs of Certiorari, Prohibition and Mandamus; which application was refused by said Supreme Court of the State of Louisiana on January 14, 1948, as appears from page 35 of certified unprinted record on file with the Clerk of the Supreme Court of the United States; the Supreme Court of the State of Louisiana refused to take jurisdiction of the matter herein involved, as appears from the face of the record, the refusal being worded thus:

"Writs refused. We find no error in the rulings complained of."

7

(a) The Plea of Unconstitutionality was entered by the appellant herein on the 21st day of November, 1947, in the Criminal Division of the District Court for the First Judicial District for the State of Louisiana, as appears on pages 20-21 of the certified unprinted record on file with the Clerk of the Supreme Court, in which it was contended that a conviction under said Sec. 7, Art. 107, of Act 43 of 1942, of the Legislature of the State of Louisiana would be violative of the due process clause of the 14th Amendment of the Constitution of the United States; said Plea

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was overruled on December 2, 1947, by the District Court as appears from pages 22, 30 of the certified unprinted record on file with the Clerk of the Supreme Court.

(b) Motion in arrest of judgment was filed in Criminal Division of District Court for the First Judicial District of the State of Louisiana by appellant on December 5, 1947, based on the grounds that Section 7 of Art. 107 of Act 43 of 1942 of the Legislature of the State of Louisiana, for the violation of which appellant was convicted, is repugnant to Amendment XIV of the Constitution of the United States as appears from pages 23-24 of the certified unprinted record on file with the Clerk of the Supreme Court; said Motion in arrest of judgment was overruled as appears from pages 25, 31 of the certified unprinted record on file with the Clerk of the Supreme Court.

(c) Said rulings herein complained of were assigned as error in the application of appellant to the Supreme Court of the State of Louisiana on the 10th day of January, 1948, for writs of certiorari, prohibition and mandamus, as appears from page 34 of the certified unprinted record on file with the Clerk of the Supreme Court; The Supreme Court for the State of Louisiana refused to issue writs on the 14th day of January, 1948, as appears from page 35 of the certified unprinted record on file with the Clerk of the Supreme Court.

8

(a) The grounds upon which it is contended that the questions involved are substantial are that said rulings of the said District Court deprived appellant herein of liberty and property without due process of law.

(b) The cases believed to sustain jurisdiction are entitled:

Lanzetta v. *New Jersey*, 306 U. S. 451; 83 Law. Ed. 888, (1939);

Connally v. *General Construction Co.*, 269 U. S. 385; 70 Law. Ed. 322.

9

The only written opinion handed down in the said conviction was a per curiam by the District Judge of the Criminal Division of the District Court for the First Judicial District for the State of Louisiana, in overruling appellant's plea of unconstitutionality.

As appears from page 22 of the certified unprinted record herein:

"Per Curiam (To Bill of Exception No. 1)

"See: State of Louisiana *v.* Crow Jackson, No. 32408 on Docket of Supreme Court in which writ was refused on Monday, May 29, 1933. In this case Jackson was charged with the then crime of Vagabondage now incorporated in the La. Criminal Code as Art. 107, Par. (7), which is the Charge against Marshall in the instant case. The Trial Court in the Jackson case considered and overruled a Motion to Quash and plea of unconstitutionality based on the same grounds as the Motion in the instant case. Jackson was then tried, convicted and sentenced. He applied for writs. The Supreme Court held 'Writs refused.' 'Ruling of the District Court was correct.'

See Also: City of N. O. *v.* Postek et als., 180 La. 1048, 158 So. 553.

JAMES U. GALLOWAY,
District Judge.

December 2, 1947."

Dated Feb. 4, 1948.

Respectfully submitted,

LEONARD LLOYD LOCKARD,
Counsel for Appellant.

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